

### **REMARKS**

The above Amendment and the following remarks are responsive to rejections in the non-final Office Action mailed November 17, 2006.

#### **Status of the Claims**

By this amendment, the Applicant has cancelled claim 23 and rewritten claims 7, 9, 10, 20, 22, 24, 27, 30, 31 and 34. After this amendment claims 1- 4, 6-18 and 20-22 and 24- 34 are pending in the application. Claims 1, 4, 7, 9, 10, 18, 24, 27, 30, 31, 32 and 34 are independent claims.

#### **Rejections under 35 USC § 101**

The Examiner rejected **claims 9-18, 20-31, and 34** on the grounds that the interactive entertainment embodied in a digital storage medium or an electronic format to be transmitted over a communications network do not impart functionality to a computer or computing device.

The patentability of data structures is described in MPEP 2106.01. While a data structure that is not claimed in a computer readable medium is not statutory subject matter, when the claim is to a computer-readable medium encoded with a data structure, the claim is statutory. Moreover, the data structure must be functional. The example given in MPEP is that a computer that recognizes a sequence of musical notes read from memory and thereafter causes another defined series of notes to be played requires a functional relationship among the data and the computing process, and is statutory subject matter.

Claim 9 has been amended to claim an interactive entertainment embodied in a digital video storage medium encoded with a data structure and readable by a digital video player, ... said data structure comprising:. Claims 10-17 claim the medium of claim 9 in combination with the digital video player. These claims are functional statutory subject matter.

Claim 18 has been similarly amended to claim an interactive entertainment embodied in a digital video storage medium with a data structure and readable by a digital video player, ... said data structure comprising:. Claim 20 claims the medium of claim 18 in combination with the digital video player, claim 21 is directly dependent from 18, and claim 22 is 21 in combination with a digital video player. These claims are functional statutory subject matter.

Claim 24 has been amended to claim an interactive entertainment embodied in an electronic format with a readable data structure ... to be transmitted to a viewer over a communications network. Claims 25 and 26 depend from 24. These claims are functional statutory subject matter.

Claim 27 has been amended to claim an interactive entertainment embodied in an electronic format with a readable data structure ... to be transmitted to a viewer over a communications network. Claims 28 and 29 depend from 27. These claims are functional statutory subject matter.

Claims 30 and 31 have been amended to claim an interactive entertainment embodied in an electronic format with a readable data structure ... to be transmitted to a viewer over a communications network. These claims are functional statutory subject matter.

Claim 34 has been amended to claim an interactive entertainment embodied in a digital video storage medium with a data structure and readable by a digital video player,... said data structure comprising:. This claim is functional statutory subject matter.

Claim 23 was cancelled.

Support for the amendments is found in paragraphs 71-73. Thus, all claims rejected under §101 have been amended or cancelled.

**§102 Rejection of Claims 1-4, 6-10, 18, 20-22, 24, 27, 30 and 31 as anticipated by Bejan.**

Claims 1-3:

Independent claim 1 was rejected upon the Examiner's belief that Bejan discloses every step of the claimed method. The Examiner is requested to re-consider that Bejan does not disclose at least claim steps (g) and (h).

- (g) producing one or more sets of variation scenes that introduce content that reflects the consequences of previous decisions selected from among the alternative decisions presented prior to the linking scene, each set of variation scenes being associated with a scene that is viewable after the linking scene; and
- (h) when the viewer is brought to a scene sequence that contains a set of variation scenes, interspersing into the scene sequence the variation scene corresponding to the viewer's selected one of the alternative decisions from among the alternative decisions presented prior to the linking scene.

Bejan discloses a method of interactive video having audience decision points that lead to alternative scene sections, and the use of "linking" scenes to pull the storyline together at some point regardless of the prior branches taken to reach that point. That method is essentially what is described in steps (a) - (f) of claim 1. The patentability of claim 1 over Bejan, however, is that additional steps (g) and (h) are a non-obvious distinction over Bejan.

Paragraph 7 of the specification in this application describes the relevant shortcoming of the prior art such as Bejan (actually describing the similar shortcoming in Best), as follows.

If the user made several relatively "bad" choices on his way to a linking scene, there is no subtle change in the content of the linking scene, or in scene sequences presented after the linking scene, to reflect the consequences of bad choices. For example, after a series of bad choices in an episode that ultimately lead to the linking scene, the interactive user's character may have his

employer say, “Job well done” because that content is predetermined in the linking scene as neutral content. However, that content does not reflect and may be inappropriate in light of the decision paths that the user may have followed in arriving at the linking scene. That is, for a particular decision path, it might be more appropriate for the employer to say, “What is wrong with you? You could have gotten killed out there. You got lucky it all worked out. Next time, you’d better do things by the book.” Thus, in the prior art form of the linking scene methodology, only the decision-neutral content progresses past a linking scene, while the apparent consequences that are specific to particular decisions, whether good or bad, are forgotten and do not produce any variation in scene sequences after the linking scene.

This shortcoming is solved by the two additional steps (g) and (h) of claim 1. which require producing sets of “variation scenes” that can be used to subtly alter the content of scene sequences that may be viewed after passing the linking point. These “variation scenes” are used to slightly modify the content of certain scenes that follow a linking scene in order to make the modified scene reflect some consequence of the previous decisions made by the viewer.

A prominent use for this type of “variation scenes” is reflected in dependant Claim 2, which adds the step of “producing the variation scenes in a set with essentially the same characters and props, such that the variation scenes in a set differ from each other by the dialog and expression of at least one character”. This allows the scene sequence following a linking point to have a primary content in which the characters follow a general script at a location using the same props, but by the technique of re-shooting a few of the exchanges between characters to allow at least one of the characters to change his or her dialog or expression, the emotional impact of the exchange can be varied in a way that carries over an implication of some

consequence of the decisions or behavior of the characters in scenes that preceded the linking point. This is shown in the Figure 4 diagram, where the scene following the linking scene (166) can have a general script at a location using the same props, but be modified by inserting the appropriate “variation scene” (180 a, b or c) to allow Harry to vary his dialog and expression to convey a different emotion that implies a consequence of Kelso’s behavior prior to the link.

Since each set of variation scenes is associated with a scene sequence that is viewable after the linking scene, step (h) provides that when the viewer is brought to a scene sequence that contains a set of variation scenes, a step is performed to intersperse into the scene sequence the variation scene corresponding to the viewer’s decisions presented prior to the linking scene. In other words, the right variation scene is selected and substituted into the scene sequence to make the dialog and expression appropriate to reflect the prior behavior.

Bejan does not disclose or suggest steps (g) and (h). Bejan discloses a process using polling input during a “multi-perspective act” to allow the audience majority to choose a character in the act, and then to view the act from the character’s perspective (camera angle). This requires filming the multi-perspective act from a camera perspective roughly aligned with each character who can be selected. Using the 3-character example in Bejan, the same multi-perspective act would be shot from three different cameras, and each camera would produce a track for the videodisk. (See column 7, lines 25 to 56 of Bejan)

The Examiner cites to column 8, lines 40-50 of Bejan, but that section merely discloses that following the multi-perspective act, the video moves into a “branching act” in which the audience is no longer permitted to change the perspective to a different character. At the end of the branching act, the audience is polled for a decision on which one of two or more alternative branch scenes to view. From that point on, the story line can pass along alternate branches as

shown in its Fig. 3 and described in column 9, 39-67 (cited by the Examiner). The relevant section of that passage begins at line 55, as follows:

The multi-perspective act ends with the audience voting on which of the three characters to follow throughout the remainder of the episode. The decision on which character to follow for the remainder of the episode is the first branching level in the branching act. When the first branching act decision is made, a scene based on that decision is played. For instance, if the audience initially selects second branch A, when that scene terminates, the audience is once again given three choices, third branch A, third branch B and third branch C. If second branch B had initially been selected, the choice at the end of that branch would be between third branch D, third branch E or third branch F.

Thus, this passage merely describes the branching, not the linking scene. Linking does not occur until the “intersection scene” of Figure 3, to which all possible paths finally lead. Bejan describes the need for linking scenes in column 10 lines 5-12, as follows.

From one level of branching to another, the number of scenes is multiplied by three. Since each scene is preferably a minimum of approximately one minute to two minutes in length, the amount of storage capacity on the videodisk 36, usually only about thirty or forty-five minutes, can be rapidly depleted. In order to minimize the number of scenes which must be stored, intersection scenes can be used. An intersection scene brings all the various branches together in time. The branching then continues from the branching scene, but with only three branches at the fourth level, instead of 27, as would be necessary if the branching continued without an intersection scene from the 9 previous scenes.

The key issue, however, is not whether Bejan discloses linking scenes, (so does prior art before Bejan), but rather what, if anything, Bejan describes happening after the intersection scene that is related to decisions made prior to the linking scene. The answer is nothing. Even more pointedly, Bejan does not disclose or suggest the steps of :

- (g) producing one or more sets of variation scenes that introduce content that reflects the consequences of previous decisions selected from among the alternative decisions presented prior to the linking scene, each set of variation scenes being associated with a scene that is viewable after the linking scene; and
- (h) when the viewer is brought to a scene sequence that contains a set of variation scenes, interspersing into the scene sequence the variation scene corresponding to the viewer's selected one of the alternative decisions from among the alternative decisions presented prior to the linking scene.

The confusion apparently stems from the Examiners citation of column 10, lines 1 to 25, in which Bejan describes a method of reducing video storage requirements by having portions of scenes on the videodisk available to be used in more than one scene. The example is a scene of a character walking a hallway. The relevant portion is at column 10, lines 12 to 21, as follows:

Another method of minimizing the storage space used for storing scenes is to have portions of scenes placed on the videodisk which can be used in more than one scene. For instance, Second Branch A may have a portion of a scene in which a character walks down a hallway. The script for Second Branch C might also call for the same character to walk down the same hallway. Instead of recording the hallway scene twice on the videodisk, those series of images can be placed on the videodisk once, and accessed as necessary by the main computer for any branch in the presentation.  
(Emphasis added)

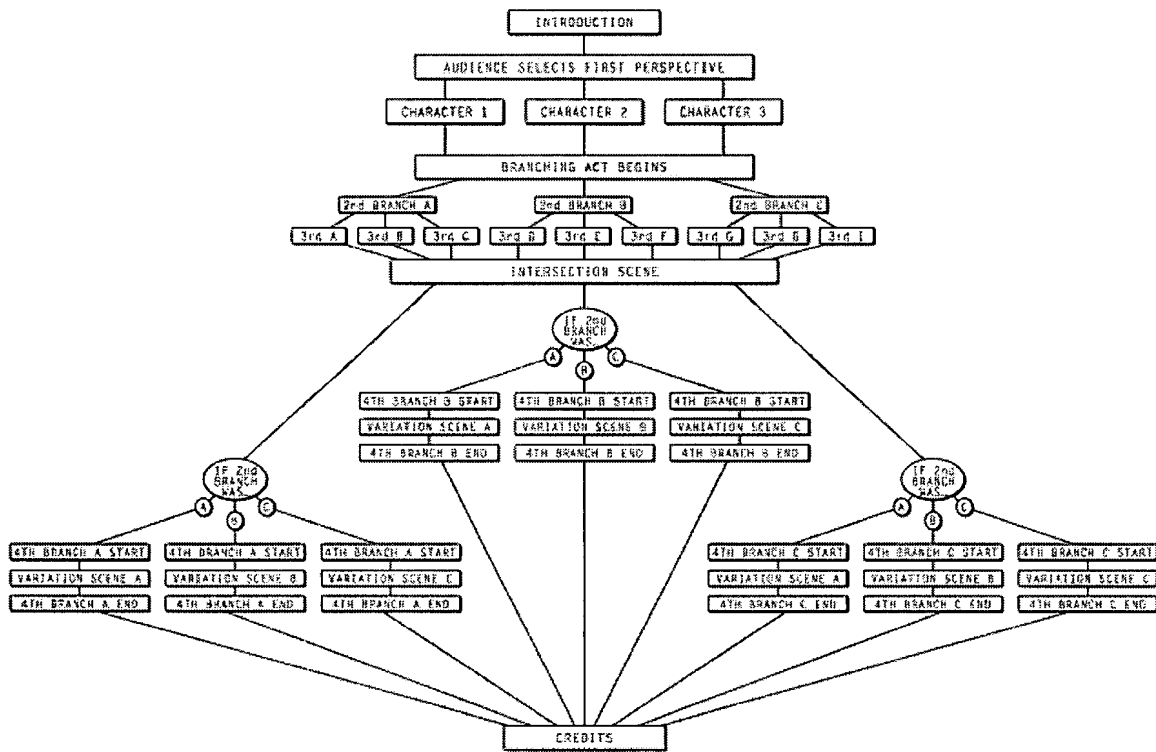
What is clearly missing from that description, however, is any suggestion to select or produce certain different scenes in sets of variation scenes that introduce content that reflects the

consequences of previous decisions prior to the linking scene. The re-usable scene portions of Bejan are merely used to show something (walking down a hall) that might be appropriate in any of several different scenes, but not necessarily be appropriate as a consequence of previous decisions.

Also clearly missing is any suggestion to insert such re-usable portions of scenes into subsequent scenes to modify the character narrative, character emotional display or character interpersonal relationships to reflect the consequences of past decisions. The steps of (g) and (h) of claim 1, however, do allow modification of scenes at and after a linking scene by interspersing into the scene sequence the variation scene selected from the set of variation scenes that contains appropriate content that appears to be related to the consequences of a character's earlier decisions.

The figure below shows how Bejan's Figure 3 would have to be modified to incorporate the use of variation scenes that would reflect the consequences of decisions made in Branch B, before the linking scene, which Bejan calls the "Intersection Scene".





Following the Intersection Scene, the viewer could select 4<sup>th</sup> Branch A (left cluster), 4<sup>th</sup> Branch B (central cluster), or 4<sup>th</sup> Branch C (right cluster). The videodisk player would then need to use the viewer's prior decision about the 2<sup>nd</sup> Branch to determine which variation scene to insert into the selected 4<sup>th</sup> branch scene sequence. For instance, if the viewer choices had been: 2<sup>nd</sup> Branch B, 3<sup>rd</sup> Branch F, and 4<sup>th</sup> Branch A, the videodisk player would select from the left-hand set of variation scenes cluster after the Intersection Scene. The videodisk would play "4<sup>th</sup> Branch A Start", "selected Variation Scene B", "4<sup>th</sup> Branch A End", and "Credits". The videodisk would play all four video segments seamlessly.

The content of selected "Variation Scene B" would contain information that uniquely relates to the consequences of the viewer's choice of 2<sup>nd</sup> Branch B. There is nothing in Bejan that

suggests any such use of variation scenes in order to reflect the consequences of decisions made prior to a linking scene in content after a linking scene.

Thus, claim 1 is neither anticipated or made obvious by Bejan.

As described above, dependant claim 2 expresses this difference from Bejan even more clearly, by the further step of producing the variation scenes in a set with essentially the same characters and props, such that the variation scenes in a set differ from each other by the dialog and expression of at least one character.

Dependant claim 3 allows two or more interactive viewers to make independent decisions that can impact narrative flow and character development cumulatively in scenes which are encountered beyond the subsequent linking scenes. Depending on the individual choices made by the viewers, character interaction between them could evolve in different ways and at different times. Since claim 3 contains the same limitations as claim 1, it should be allowable for the same reasons.

Claims 4 and 6:

The rejection of independent claim 4 was based upon the Examiner's belief that Bejan discloses every step of the claimed method. The Examiner is requested to re-consider that Bejan does not disclose steps (d) (e) and (f) of claim 4.

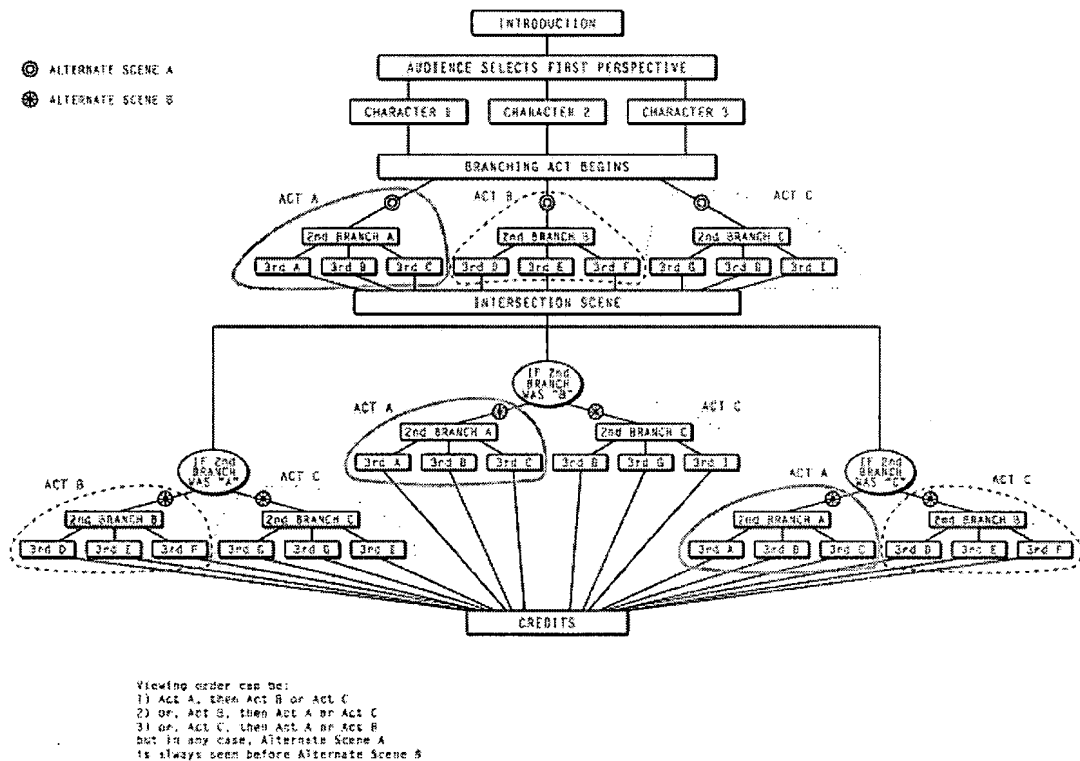
- (d) in each act that can be presented in a different order, providing neutral scenes in which the content is not dependant upon the order in which the act is viewed, and providing sets of alternative scenes in which the content is dependant upon the order in which the act is viewed;
- (e) prompting the viewer to make one of the alternative decisions that will determine the order of a subsequent act; and
- (f) presenting to the viewer, in the act determined by his decision, neutral scenes of the act interspersed with alternative scenes that reflect the consequences of previous

decisions selected from among the alternative decisions presented prior to the linking scene and that correspond to the viewer's selected one of the alternative decisions.

As described above, Bejan describes a method of reducing video storage requirements by having portions of scenes on the videodisk available to be used in more than one scene, as in the example of a re-usable scene portion showing a character walking a hallway, described at column 10, lines 12 to 21.

The Examiner apparently regards these re-usable scene portions to be "neutral" since they can be used in more than one scene sequence (or act) without changing the storyline of that act, and that is indeed what they are. The content of the re-usable scene portions described in Bejan is constant no matter when one is viewed. They are not "sets of alternative scenes in which the content is dependant upon the order in which the act is viewed". Consequently, there is no disclosure or suggestion of presenting such neutral scenes "interspersed with alternative scenes that reflect the consequences of previous decisions".

The figure below shows how Bejan's Figure 3 would have to be modified to change the order in which acts could be viewed, using alternative scenes that reflect the viewer's decisions prior to a linking scene. There is nothing in Bejan that anticipates such a restructuring of the story flow.



The purpose of the set of alternative scenes is to allow the presentation of the neutral content to become biased in a way that reflects the order in which the act was viewed by selecting the appropriate alternative scene from the set, and interspersing it into the neutral scene. Thus, claim 4 is neither anticipated or made obvious by Bejan.

Dependant claim 6 adds to the method of claim 4 further steps which give the ability of two or more interactive viewers to each make at least one decision that determines the order in which acts are presented. Since claim 4 is patentable over Bejan, so is claim 6.

Claims 7-8:

The rejection of independent claim 7 was based upon the Examiner's belief that Bejan discloses every step of the claimed method. The Examiner is requested to re-consider that Bejan does not disclose steps (d) and (f) of claim 7 as presently amended.

- (d) in each act that can be presented in a different order, providing alternative connecting scenes leading into and out of the act, wherein the alternative connecting scenes contain content that is related to the order in which the act is selected for viewing ;
- (e) prompting the viewer to make one of the alternative decisions that will determine the order of a subsequent act; and
- (f) presenting to the viewer, in the subsequent act determined by his decision, the alternative connecting scenes that reflect the order in which the act is selected for viewing.

Bejan does not teach or suggest presentation of acts in different order. The Examiner relies upon Bejan Figure 3 and text describing Figure 3, but it is clear from Figure 3 that the acts cannot be presented in different order. There is no way to present the Intersection Scene before the Branching Act, nor any way to view any of the 3rd branch scenes before the 2<sup>nd</sup> branch, or to present a 4<sup>th</sup> branch scene before a 2<sup>nd</sup> and 3<sup>rd</sup> branch. The viewer can select which 2<sup>nd</sup> branch to view, and from that choice select which 3<sup>rd</sup> branch to view, but cannot select to view any 3<sup>rd</sup> branch before a 2<sup>nd</sup> branch.

The Applicants do not contend, however, that the invention of claim 7 is allowing acts to selected for viewing in different order. The invention of claim 7 includes providing alternative connecting scenes leading into and out of a scene that can be selected for viewing in different order, wherein the alternative connecting scenes contain content that is related to the order in which the act is selected for viewing, and present the appropriate connecting scenes after the

viewer has selected the order of viewing the act. Thus, claim 7 is neither anticipated or made obvious by Bejan.

Dependant claim 8 adds to the method of claim 7 several steps which give the ability of two or more interactive viewers to each make at least one decision that determines the order in which acts are presented. Since claim 7 is patentable over Bejan, so is claim 8.

#### Claims 9 -10

The rejection of independent claim 9 was based upon the Examiner's belief that Bejan discloses every element of the claimed article (interactive entertainment embodied in a digital video storage medium). The Examiner is requested to re-consider that Bejan does not disclose or suggest at least elements (e) and (f) of claim 9.

- (e) one or more sets of variation scenes that introduce content that reflects the consequences of previous decisions selected from among the alternative decisions presented prior to the linking scene and that corresponds to the viewer's selected one of the alternative decisions, each set of variation scenes being associated with a scene sequence that is viewable after the linking scene, and
- (f) programming code for identifying in a scene sequence a variation scene that is selected from a set of variation scenes associated with that scene sequence, wherein the selection is based upon previous decisions made prior to the linking scene.

The Examiner cites to column 10, lines 1 to 25 of Bejan, which describes a method of reducing video storage requirements by having portions of scenes on the videodisk available to be used in more than one scene. The Examiner apparently views the scene portions as being a form of "variation scenes". What is clearly missing, however, is any suggestion to select or produce such scene in sets, such that the content of the variation scenes in a set introduce content that reflects the consequences of previous decisions prior to a linking scene, and associating each

set with a scene sequence following the linking scene. The scene portions are merely used to showing something (walking down a hall) that might be appropriate in several different scenes, but not necessarily be related to any consequence of previous decisions.

Thus, claim 9 is neither anticipated or made obvious by Bejan.

Claim 10 claims the digital video storage medium of claim 9 in combination with a digital video player having: (a) means for enabling the viewer to make the alternative decisions, and (b) software for presenting the scene sequences that corresponds to the viewer's decisions, for identifying when the viewer is brought to a scene sequence that contains a set of variation scenes, and for interspersing into that scene sequence the variation scene from the set that is related to the particular decision made. Since Claim 9 is patentable over Bejan, so is claim 10.

Claims 18 and 20-22:

The rejection of independent claim 18 was based upon the Examiner's belief that Bejan discloses every element of the claimed article (interactive entertainment embodied in a digital video storage medium). The Examiner is requested to re-consider that Bejan does not disclose or suggest elements (b) (c) and (d) of claim 18.

- (b) at least one of the acts having a scene that presents to the viewer at least one set of alternative decisions from which the viewer selects one of the alternative decisions that will determine an order in which a subsequent act will be presented;
- (c) each act that can be presented in a different order having neutral scenes in which the content is not dependant upon the relative order in which the act is viewed, and sets of alternative scenes in which the content is dependant upon the relative order in which the act is viewed; and
- (d) programming code for presenting to the viewer an alternate scene in the act that is appropriate for the order in which the act is viewed.

Bejan does not teach or suggest presentation of acts in different order. The Examiner relies upon Bejan's Figure 3 and text describing Figure 3, but it is clear from Figure 3 that the acts cannot be presented in different order.

Moreover, the Examiner apparently regards the scene portions described at column 10, lines 12-21 to be "neutral", since they can be used in more than one scene sequence (or act) without changing the storyline of that act, and that is indeed be what they are. They are not "sets of alternative scenes in which the content is dependant upon the relative order in which the act is viewed". Consequently, there is no disclosure or suggestion of presenting such neutral scenes "interspersed with alternative scenes that reflect the consequences of previous decisions". The purpose of the sets of alternative scenes is to allow the presentation of the neutral content to become biased in a way that reflects the order in which the act was viewed by selecting the appropriate alternative scene from the set and interspersing it into the act.

Thus, claim 18 is neither anticipated or made obvious by Bejan.

Claim 20 includes the digital video storage medium of claim 18, and a digital video player having: (a) means for enabling the viewer to make the alternative decisions, and (b) software for presenting the scene sequences that corresponds to the viewer's decisions, for identifying when the viewer is brought to a scene sequence that contains a set of variation scenes, and for interspersing into that scene sequence the variation scene from the set that is related to the particular decision made. Since Claim 18 is patentable over Bejan (which does not teach or suggest presentation of acts in different order), so is claim 20. Claims 21 and 22 are also dependent upon claim 18, and therefore patentable.



Claim 24.

The rejection of independent claim 24 based on Bejan should be withdrawn for reasons previously discussed. The Examiner is requested to re-consider that Bejan does not disclose at least elements (e) and (f) of claim 24.

- (e) one or more sets of variation scenes that introduce content that reflects the consequences of previous decisions selected from among the alternative decisions presented prior to the linking scene and that correspond to the viewer's selected one of the alternative decisions, each set of variation scenes being associated with a scene sequence that is viewable after the linking scene, and
- (f) programming code for identifying in a scene sequence a variation scene that is selected from a set of variation scenes associated with that scene sequence, wherein the selection is based upon previous decisions made prior to the linking scene.

As described above, Bejan describe a method of reducing video storage requirements by having portions of scenes on the videodisk available to be used in more than one scene, using the example is a scene portion showing a character walking a hallway. The Examiner apparently regards these scene portions to be a form of "variation scenes" since they can be used in more than one scene sequence (or act) . They are not variation scenes. The description of re-usable scene portions in Bejan lacks any suggestion to produce sets of variation scenes that introduce content that reflects the consequences of previous decisions prior to the linking scene. The Bejan re-usable portions are merely used to show something (walking down a hall) that might be appropriate in several different scenes, but not necessarily be tailored to by appropriate to reflect any consequence of previous decisions.

Also clearly missing from Bejan is any suggestion to insert such re-usable portions of scenes into subsequent scenes to modify the character narrative, character emotional display or

character interpersonal relationships to reflect the consequences of past decisions. The elements (e) and (f), however, do allow modification of scenes at and after a linking scene by interspersing into the scene sequence the variation scene having the content that appears to be related to the consequences of a character's earlier decisions. Thus, claim 24 is neither anticipated or made obvious by Bejan.

Claim 27.

The rejection of independent claim 27 based on Bejan should be withdrawn for reasons previously discussed. The Examiner is requested to re-consider that Bejan does not disclose at least elements (b) (c) and (d) of claim 27.

- (b) at least one of the acts having a scene that presents to the viewer at least one set of alternative decisions from which the viewer selects one of the alternative decisions that will determine an order in which a subsequent act will be presented;
- (c) each act that can be presented in a different order having neutral scenes in which the content is not dependant upon the relative order in which the act is viewed, and sets of alternative scenes in which the content is dependant upon the relative order in which the act is viewed; and
- (d) programming code for presenting to the viewer an alternate scene in the act that is appropriate for the order in which the act is viewed.

Bejan does not teach or suggest presentation of acts in different order. The Examiner relies upon Bejan Figure 3 and text describing Figure 3, but it is clear from Figure 3 that the acts cannot be presented in different order. There is no way to present the Intersection Scene before the Branching Act, nor any way to view any of the 3rd branch scenes before the 2<sup>nd</sup> branch, or to present a 4<sup>th</sup> branch scene before a 2<sup>nd</sup> and 3<sup>rd</sup> branch. The viewer can select which 2<sup>nd</sup> branch to view, and from that choice select which 3<sup>rd</sup> branch to view, but cannot select to view any 3<sup>rd</sup> branch before a 2<sup>nd</sup> branch.

In addition, the content of there-usable scene portions described in Bejan is constant no matter when one is viewed. They are not “sets of alternative scenes in which the content is dependant upon the order in which the act is viewed”. Consequently, there is no disclosure or suggestion of presenting such neutral scenes “interspersed with alternative scenes that reflect the consequences of previous decisions”. The purpose of the set of alternative scenes is to allow the presentation of the neutral content to become biased in a way that reflects the order in which the act was viewed by selecting the appropriate alternative scene from the set and interspersing it into the neutral scene. Thus, claim 27 is neither anticipated or made obvious by Bejan.

Claim 30.

The rejection of independent claim 30 based on Bejan should be withdrawn for reasons previously discussed. The Examiner is requested to re-consider that Bejan does not disclose at least elements (e) and (f) of claim 30.

- e) one or more sets of variation scenes that introduce content that reflects the consequences of previous decisions selected from among the alternative decisions presented prior to the linking scene and that correspond to the viewer’s selected one of the alternative decisions, each set of variation scenes being associated with a scene sequence that is viewable after the linking scene, and
- (f) programming code for identifying in a scene sequence a variation scene that is selected from a set of variation scenes associated with that scene sequence, wherein the selection is based upon previous decisions made prior to the linking scene.

As described above, the re-usable scene potions of Bejan are not sets of variation scenes that can be interspersed a scene sequences after the linking scene to make the scene sequence reflect the consequence of decision before the linking scene. Thus, claim 30 is neither anticipated or made obvious by Bejan.

Claim 31.

The rejection of independent claim 31 based on Bejan should be withdrawn for reasons previously discussed. The Examiner is requested to re-consider that Bejan does not disclose at least elements (b) (c) and (d) of claim 31.

- (b) at least one of the acts having a scene that presents to the viewer at least one set of alternative decisions from which the viewer selects one of the alternative decisions that will determine an order in which a subsequent act will be presented;
- (c) each act that can be presented in a different order having neutral scenes in which the content is not dependant upon the relative order in which the act is viewed, and sets of alternative scenes in which the content is dependant upon the relative order in which the act is viewed; and
- (d) programming code for presenting to the viewer an alternate scene in the act that is appropriate for the order in which the act is viewed.

programming code for presenting to the viewer the alternative content in the act that is appropriate for the order in which the act is viewed.

Bejan does not teach or suggest presentation of acts in different order. In addition, the content of the re-usable scene portions described in Bejan is constant no matter when one is viewed. They are not “sets of alternative scenes in which the content is dependant upon the order in which the act is viewed”. Consequently, there is no disclosure or suggestion of presenting such neutral scenes “interspersed with alternative scenes that reflect the consequences of previous decisions”. The purpose of the set of alternative scenes is to allow the presentation of the neutral content to become biased in a way that reflects the order in which the act was viewed by selecting the appropriate alternative scene from the set and interspersing it into the neutral scene. Thus, claim 31 is neither anticipated or made obvious by Bejan.

**§102 Rejection of Claims 18, 20-22, 27-29, 31-34 as anticipated by Shiels**

Claim 18.

Claim 18 is not anticipated by Shiels, because Shiels does not disclose an interactive entertainment embodied in a digital video storage medium encoded with a data structure and readable by a digital video player having at least the following elements:

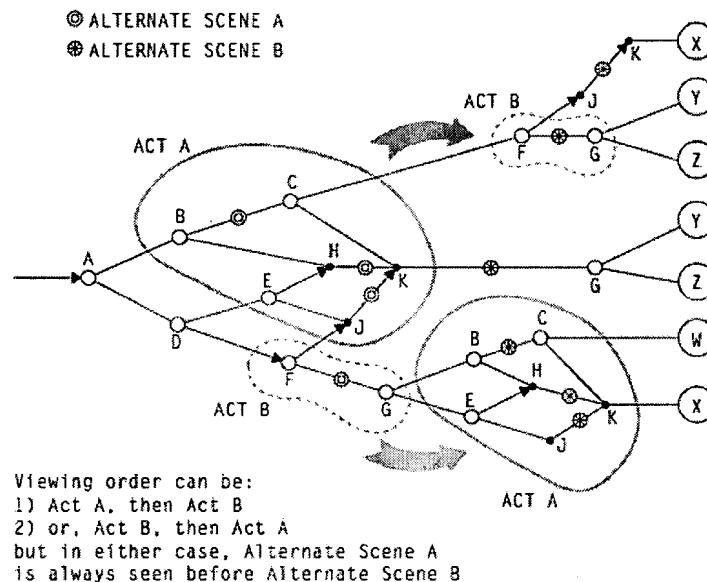
- (c) each act that can be presented in a different order having neutral scenes in which the content is not dependant upon the relative order in which the act is viewed, and sets of alternative scenes in which the content is dependant upon the relative order in which the act is viewed; and
- (d) programming code for presenting to the viewer an alternate scene in the act that is appropriate for the order in which the act is viewed.

The Shiels entertainment structure does not actually allow the viewer's decision to change the order in which an act is viewed. The Examiner relies upon Figure 6 of Shiels and the text related to it, but that flow chart and description show that the branching narrative moves consistently from beginning toward end, albeit by alternative paths, without ability to change the order in which acts are viewed. In Figure 6, if the video segment H to K is viewed, it must always be viewed before the segment beginning at K, never after it.

The Examiner apparently regards the fact that some segments in Shiels can be reached by more than one path (for example, H can be reached by A-B-H or by A-D-E-H) to mean the segment can be presented in a different order. It is not the same as having the ability to be presented in a different order, as can be seen by comparison to Figure 8 of the present application. If the point A of Shiels' Figure 6 corresponds to a starting point such as 403 in Applicant's Figure 8, then Shiels provides no way to see scene B before scene F. In fact, by selecting scene B, the potential to see scene F is taken away. By contrast, selecting to first view

the Art Museum scene of Figure 8 does not eliminate the potential to select either the City Park or the Mansion as subsequent scenes.

The figure below shows how Shields' Figure 6 would have to be modified to allow scenes to be viewed in different orders. With this change, the viewer could view scene B and later view scene F, or view scene F and then later view scene B.



Moreover, even if Shields is considered to allow the viewer's decision to change the order in which an act is viewed, Shields does not disclose or suggest the sort of structuring of scene sequences shown in the prior figure that includes elements (c) and (d) of claim 18.

Elements (c) and (d) recite that the data structure contains alternative scenes by which the neutral scenes of an moveable act can be supplemented, to the effect that regardless of whether the act is

viewed earlier or later in the narrative, the insertion of the appropriate alternative scenes will make the act appear to fit naturally for the relative order in which it is viewed. This is not present in Shiels. While scenes H, J and K of Shiels can be reached by different decision paths, they do not contain sets of alternative scenes in which the content is dependant upon the path taken to arrive there, much less upon the order in which the acts are viewed. (Shiels ability to grab a screen sequence after viewing it, and then recall it by choice at some later time as a memory “flashback”, is not the same or similar to providing sets of alternative scenes that can be inserted into an act to add content that is appropriate to the order in which the act is viewed.) Thus, claim 18 is neither anticipated or made obvious by Shiels.

#### Claims 20-22

Claims 20-22 are not anticipated because Shiels does not disclose the interactive entertainment system of claim 18 as explained above, hence the combination of the claim 18 system with a digital video player is not anticipated. Further, while Shiels does provide the audience with means to make the alternative decisions that determine a sequence of acts to be viewed, it does not disclose any means for presenting neutral scenes interspersed with alternative scenes that are appropriate to the relative order in which the act is presented. Claims 21 and 22 depend from claim 20. None of the three are anticipated by Shiels.

#### Claims 27-29

Claims 27-29 are not anticipated because Shiels does not disclose an interactive entertainment embodied in an electronic format encoded with a readable data structure to be transmitted to a viewer over a communications network having at least the following elements:

- (b) at least one of the acts having a scene that presents to the viewer at least one set of alternative decisions from which the viewer selects one of the alternative decisions that will determine an order in which a subsequent act will be presented;

- (c) each act that can be presented in a different order having neutral scenes in which the content is not dependant upon the relative order in which the act is viewed, and sets of alternative scenes in which the content is dependant upon the relative order in which the act is viewed; and
- (d) programming code for presenting to the viewer an alternate scene in the act that is appropriate for the order in which the act is viewed.

Element (b) demonstrates why the Shiels entertainment structure does not allow the viewer's decision to change the order in which an act is viewed. There is no decision point in Shiels at which the alternative decision that will determine an order in which a subsequent act will be presented. Once a decision is made as to which act to view next, the other acts available at the decision point choices are eliminated from being chosen downstream.

Elements (c) and (d) provide the use of alternative scenes to make the act appropriate to the relative order in which the act is viewed. Shiels provides the audience with means to make the alternative decisions that determine a sequence of acts to be viewed, but it does not disclose any means for presenting neutral scenes interspersed with alternative scenes that are appropriate to the relative order in which the act is presented. Claims 28 and 29 depend from claim 27. None of the three are anticipated by Shiels.

#### Claim 31

Claims 31 is not anticipated because Shiels does not disclose an interactive entertainment embodied in an electronic format encoded with a readable data structure to be transmitted to a viewer over a broadcast network having at least the following elements:

- (b) at least one of the acts having a scene that presents to the viewer at least one set of alternative decisions from which the viewer selects one of the alternative decisions that will determine an order in which a subsequent act will be presented;
- (c) each act that can be presented in a different order having neutral scenes in which the content is not dependant upon the relative order in which the act is



viewed, and sets of alternative scenes in which the content is dependant upon the relative order in which the act is viewed; and

(d) programming code for presenting to the viewer an alternate scene in the act that is appropriate for the order in which the act is viewed.

These elements are similar or identical to the corresponding elements (b) - (d) of claim 27, so the same analysis applies. Claims 31 is not anticipated by Shiels.

Claims 32 - 33

Claim 32 is not anticipated because Shiels does not disclose a method for providing interactive entertainment in periodic serial format (episodes) having at least the following steps:

- (b) in at least one of the episodes, presenting to the viewer alternative decisions that will determine an order in which a subsequent episode will be presented;
- (d) in each episode that can be presented in a different order, providing alternative connecting scenes leading into and out of the episode;
- (e) prompting the viewer to select one of the alternative decisions that will determine the order of a subsequent episode;
- (f) presenting to the viewer, in the subsequent episode determined by his decision, the alternative connecting scenes that are appropriate to the order in which the episode is presented.

Shiels does not disclose or suggest a method for providing interactive entertainment which includes the steps of providing the entertainment in episodes and allowing the viewer to make alternative decisions that will determine an order in which a subsequent episode will be presented. Consequently, Shiels also does not disclose or suggest the steps of providing alternative connecting scenes leading into and out of the episode, and presenting the viewer the connecting scenes that are appropriate to the order in which the episode is presented. At each decision point in Shiels, a viewer can select between alternative choices of which section to

view, but making that selection does not change the selected section. By steps (d) and (f) above, the present invention changes the selected section (episode) by applying connecting scenes leading into and out of the episode from a group of alternative connecting scenes, to make the transition into and out of the episode appropriate for the order in which the episode is viewed. Dependent claim 33 is not anticipated for the same reason as Claim 32.

Claim 34

Claim 34 is not anticipated because Shiels does not disclose or suggest an interactive entertainment delivered to a viewer as a plurality of periodic episodes, having at least the following steps:

- (c) each episode that can be presented in a different order having neutral scenes in which the content is not dependant upon the relative order in which the episode is viewed, and sets of alternative scenes in which the content is dependant upon the relative order in which the episode is viewed; and
- (d) presenting to the viewer one or more of such alternative scenes in the act to provide the alternative content in the act that is appropriate for the order in which the act is viewed.

Shiels does not provide sets of alternative scenes to be presented in the act to provide alternative content in the act that is appropriate for the order in which the act is viewed.

**§ 103 Claim Rejections.**

Claims 11, 13, 14, ,16, 17, 25 and 26 were rejected over Bejan in view of Shiels

Claims 11-17 all depend from claim 10, and merely recite several forms of digital video player. The Applicant does not contend that the particular form of digital video player is a separate ground of patentability. Claims 11 - 17 are patentable because claim 9 and 10 are not anticipated by Bejan or made obvious by Bejan, for reasons shown above, are not made obvious by Shiels. Shiels is cited merely to show that different forms of video player are known.

Similarly, 25 and 26 are patentable because they depended from a patentable claim 24, not because the type of digital video player is a separate ground of patentability.

Claims 12 and 15 were rejected as obvious over Bejan in view of Abecassis. Claims 12 and 15 are patentable because claim 9 and 10 are not anticipated by Bejan or made obvious by Bejan, for reasons shown above. They are not made obvious by Abecassis, which again is cited merely to show a different type of video player.

Claims 23 has been cancelled.

### **Double Patenting**

The Examiner should re-consider that co-pending application 10/003187 does not claim the steps of:

- (g) producing one or more sets of variation scenes that introduce content that reflects the consequences of previous decisions selected from among the alternative decisions presented prior to the linking scene, each set of variation scenes being associated with a scene that is viewable after the linking scene; and
- (h) when the viewer is brought to a scene sequence that contains a set of variation scenes, interspersing into the scene sequence the variation scene corresponding to the viewer's selected one of the alternative decisions from among the alternative decisions presented prior to the linking scene.

### **Examiner Interview**

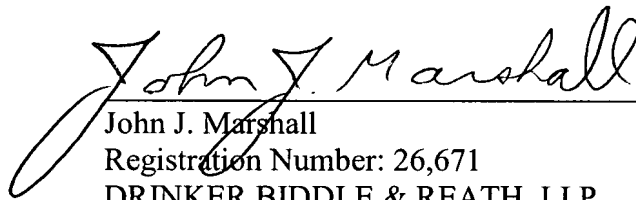
The Applicant wishes to remind the Examiner, Farzana Hossain, and the Examiner's supervisor, Chris Grant, that on the July 13, 2006, Examiner Interview, we discussed claim 1, Figure 5, and the Bejan et al. prior art reference. The Applicant also explained the variable scene concept in the claims by demonstrating excerpts from a 30-minute TV show. The Examiner and the Examiner's supervisor agreed that the proposed amendment to claim 1 "appears to overcome the current prior art rejection, however the proposed amendment would require further search and consideration." The Examiner did further consideration, but the new grounds for rejection

appear in some cases to ignore the points of novelty that were discussed at the Interview. Hence, this has been a long and detailed written response. By expressing these distinctions in detail in the response, the Applicant hopes that the examiner will recall much of what we demonstrated at the interview.

### AUTHORIZATION

The undersigned hereby authorizes the Commissioner to charge all required fees, fees under 37 C.F.R. §§ 1.16 and 1.17, or all required extension of time fees for this paper to Deposit Account Number 50-0573.

Respectfully submitted,  
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